IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3227 OF 2005

Vithal Shivgir Gosavi & Ors. ...Petitioners.
Vs.
The State of Maharashtra & Ors. ...Respondents.
....
Mr. S. V. Dhakephalkar for the Petitioners.
Mr.P. M. Patil, AGP for the Respondents.
.....

CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

June 16, 2005.

P.C.:

The land belonging to the Petitioners comprised in Survey No.440 of Pimpalgaon Baswant, admeasuring 2 Hectares and 5 Ares was acquired for the purposes of an S.T. Depot and an allied workshop of the Maharashtra State Road Transport Corporation ("MSRTC"). The acquisition proceedings took place in pursuance of a notification under Section 4 of the Land Acquisition Act, 1894, dated 24th June 1982. Eventually, an award was declared by the Special Land Acquisition Officer. References came to be filed under Section 18 and Section 30 respectively which were disposed of by the Additional District Judge, Nasik on 3rd March 1994. The State Government has filed a First Appeal

before this Court which is stated to be pending.

2. The submission of the Petitioner is that the land was acquired for the purposes of an S.T. Bus Depot and its allied workshop and this being a public purpose, the acquisition was not challenged by them. The grievance of the Petitioners is that MSRTC has now decided to utilise a portion of the land admeasuring 115 x 161 sq.ft. for commercial purposes and tenders have been invited for the aforesaid project. According to the Petitioners, the user of a part of the land for commercial purposes violates the provisions of the Land Acquisition Act, 1894. The relief which has been sought before the Court is for the return of an area admeasuring 115 x 161 sq.ft. out of Survey No.440.

3. Having heard Counsel appearing on behalf of the parties, we are of the view that there is no merit in the petition. The land has been acquired for the public purpose of an S.T. Depot of MSRTC together with an allied workshop. The award was declared, possession was taken and vesting is complete. It is a settled principle of law that once vesting in the State has taken place, in pursuance of proceedings for the acquisition of the land,

it is open to the State to change the public purpose for which land will be used. In **Gulam Mustafa Vs. State of Maharashtra**, (1976) 1 SCC 800, the Supreme Court held as follows :

> "Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration."

The same principle has been reiterated by the Supreme Court in **Mangal Oram vs. State of Orissa,** (1977) 2 SCC 46. But that apart, in the present case, there is no change in public purpose at all. The dominant purpose for which the land will have to be and is to be utilised is for an S.T. Depot and a workshop for MSRTC. A portion of the land is to be utilised for commercial purposes. MSRTC as an agency of the State Government is entitled in law to raise resources for funding the completion of its public project of

constructing a Bus Depot and workshop by using a portion of the land for commercial purposes. A similar argument as is urged before us by the Petitioner, was urged before the Supreme Court in **Forward Construction Co. Vs. Prabhat Mandal**, (1986) 1 SCC 100. Repelling the argument, the Supreme Court emphasised that where a substantial part of the acquired plot of land was being used for a public purpose - in that case for the construction of a Bus Stand for which it was acquired - the use of a small portion for commercial purposes that would augment the resources of a public Corporation would not be illegal. The Supreme Court held thus:

> "The fourth point raised is that the plot No.14 acquired for a public purpose of constructing a bus station was being used for a commercial purpose which was not permissible. This plea had been rejected by the High court holding that a very substantial portion was acquired and the commercial use to which a small portion was being put would substantially augment the coffers of the Corporation for the benefit of the public at large without spending any further amount on the development. It cannot be said that the plot has been used for a different purpose from the one for which it had been acquired. All

> that can be said is that a part of the plot is being used for constructing two buildings which would augment the income of BMC that could be utilised for the public purpose. The plot is being substantially used for the purpose for which it had been acquired. The additional use of the property will not make the use of the property for altogether a different purpose."

The judgment of the Supreme Court is a clear answer to the submission which has been urged before us.

4. In these circumstances, we do not find any merit in the petition. The petition is accordingly rejected.

.....